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CF1001

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W.P.NO.2443 /2003 /

PETITIONER

: Rambhau Khaparde
S/o Badaram Khaparde,
Aged about 60 years,
R/o Rampur Ward, Dhamtari
District, Dhamtari (CG).

VERSUS

RESPONDENTS

P. R. No. 2129/03
Presented by Shri Dhanraj Patil
dated 29.02.03

- 1) Krishi Upaj Mandi Samiti
Dhamtari,
Through its Secretary,
Krishi Upaj Mandi Samiti,
Dhamtari, Distt. Dhamtari (CG).
- 2) The President,
Krishi Upaj Mandi Samiti,
Dhamtari, Distt. Dhamtari (CG).

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF

I N D I A

आदेश पत्रक

मामला क्रमांक W.P.No. 2443/2003 सन् 2003

..... विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>06.9.2006</u> <u>I.A.No.7846/2004</u> Shri Arun Shukla, counsel for the petitioner. Shri R.S. Marhas, counsel for the respondents. Heard. This is an application filed from the office of Shri P. Diwakar, Sr. Advocate for withdrawal of the earlier <i>Vakalatnama</i>, as the file has been withdrawn from his office. Shri Arun Shukla submits that after obtaining N.O.C., now he has filed Power on behalf of the petitioner. In the facts and circumstances, this interim application is allowed. The power filed by Shri P. Diwakar, Sr. Advocate and his associates stands withdrawn and Shri Arun Shukla is permitted to appear on behalf of the petitioner. This interim application stands disposed of. In view of the above, I.A.No.7453/2003 for urgent hearing also stands disposed of. <u>W.P.No.2443/2003</u> Shri Arun Shukla, learned counsel for the petitioner. Shri R.S. Marhas, learned counsel for the respondents. Arguments heard. Order dictated as follows:	

(पीछे देखिये)

आदेश पत्रक

मामला क्रमांक W.P. 2443 सन् 2003

..... विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>ORAL ORDER</u> (6.9.2006) By way of this writ petition, filed under Article 226/227 of the Constitution of India, the petitioner has challenged the legality, validity and propriety of the order dated 25.7.2003 (Annexure P-8), passed by the Krishi Upaj Mandi Samiti, Dhamtari, hereinafter referred to as 'Samiti'. The brief facts are that the petitioner was a licensee of Krishi Upaj Mandi Samiti, Dhamtari. He was granted a license of Weighman by the said Samiti in accordance with the provisions of Section 32 of the C.G. Krishi Upaj Mandi Adhiniyam, 1972, hereinafter referred to as the 'Act'. The said license was granted to the petitioner on 1.4.1999 and thereafter, the same was continued till passing of the impugned order dated 25.7.2003. It appears that 2 show cause notices were issued to the petitioner vide Annexures P-4 17.6.2003 and P-6 dated 3.7.2003. It was alleged in the notices that the petitioner used to file various litigations against the Mandi, due to which, the Mandi officers are busy in contesting the cases before the Courts. It is further stated that the petitioner unnecessarily enters into correspondence with the higher authorities of the Mandi and all these acts are the breach of conditions of the license and why the license of the petitioner should not be cancelled on these grounds. Replies to the above notices were given by the	

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	petitioner on 25.6.2003 (Annexure P-5) and 12.7.2003 (Annexure P-7). After receiving the aforesaid replies of the petitioner, the Mandi Committee by resolution No.3 dated 23.7.2003, took a decision that in light of the grounds raised and further in light of the reply filed by the petitioner, the license of the petitioner should be cancelled and it was accordingly cancelled by the Committee. The impugned order, Annexure P-8 is an order issued by the Secretary in consequence of the above decision taken by the Mandi Samiti. Learned counsel for the petitioner submits that none of the licensing conditions have been violated by the petitioner. He further submits that the petitioner is the President of the Taulaya & Reja Sangh of Krishi Upaj Mandi Samiti, Dhamtari and therefore, on many occasions, he is required to make correspondence with the higher authorities of the Committee and the act of the petitioner, in any manner, does not violate any of the licensing conditions, therefore, the order passed by the Samiti is not in accordance with law. A reply to the aforesaid petition has been filed by the respondents, in which, apart from the other objections, a preliminary objection has been taken that the order passed by the Samiti is an order under Section 33 of the said Act and in view of the provisions of Section 34 of the Act, the order was an appealable order and since the effective	

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	alternative remedy was available to the petitioner, he should not have visited to the High Court in the first instance bypassing the said remedy. I have heard learned counsel for the parties at length and have also gone through the records of the writ petition. It appears that in this case, the license has been cancelled on the ground that the petitioner has committed breach of conditions of the license. But, neither the petitioner nor the respondents have filed the copy of the license and in this manner, at present this Court is not in a position to ascertain as to what the conditions of the license were and how the conditions were breached by the petitioner. This Court is fully conscious about the legal preposition that the availability of an alternative remedy is not a ground either to obliterate or to oust the writ jurisdiction under Article 226 of the Constitution. It is only a rule of prudence and has to be adopted in the context of facts and circumstance of the case and with a view to secure justice between the parties. If the question appears to be one of merits of an order passed on factual grounds, which are the subject matters of analysis for ascertaining the disputed facts in issue, which may require evidence and if an effective statutory remedy is available in this regard, then, that should be exhausted, prior to directly challenging the order in which, such an exercise may be undertaken.	

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	Since, there is an effective statutory remedy of appeal against the order, passed by the Mandi Samiti, I deem it proper to observe that the petitioner, who is having an alternative and efficacious remedy, may file an appeal before the appellate authority and appropriate decision should be taken by the said authority. In the facts and circumstances of the case, this petition is disposed of with an observation that if so advised, the petitioner may file an appeal before the appropriate authority and if such an appeal is filed within a period of 15 days from today, the appropriate authority shall dispose of the same in accordance with law as early as possible preferably within a period of eight weeks from the date of presentation of the appeal along-with a copy of this order passed by this Court. Certified Copy as per rules.	-5- Sd/- Sunil Kumar Sinha Judge

(पीछे देखिये)

13-9-06